
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Nancy Freundt Alberti
Lucciola Alberti de Freundt
Estate of Oscar Freundt Rosell

Case Number: 03-02457

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Nancy Freundt Alberti ("NFA"), Lucciola Alberti de Freundt ("LAF"), and the Estate of Oscar Freundt Rosell ("EOR"), hereinafter collectively referred to as "Claimants": Daniel Blonsky, Esq., Aragon, Burlington, Weil, Schwiep, Kaplan & Blonsky, P.A., Miami, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Alex Sabo, Esq. and Bennett Falk, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 2, 2003.

Claimants NFA and LAF signed the Uniform Submission Agreements: April 2, 2003.

Claimant EOR filed a Uniform Submission Agreement executed by Claimant NFA on or about: July 30, 2004.

Statement of Answer filed by Respondent on or about: August 29, 2003.

Respondent did not file an executed Uniform Submission Agreement.

Motion to Stay Arbitration filed by Respondent on or about: May 28, 2004.

Response to Respondent's Motion to Stay Arbitration and Claimants' Motion for Sanctions filed by Claimants on or about: June 15, 2003.

Supplemental Response to Respondent's Motion to Stay Arbitration filed by Claimants on or about: July 16, 2004.

Response to Claimant's Motion for Sanctions filed by Respondent on or about: July 16, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: churning; breach of fiduciary duty; negligence; breach of contract; breach of NASD rules; and failure to provide an accounting and to provide information. The causes of action relate to, among other things, the purchase in Claimants' joint account of Chemical Corporation Bond, as well as the short-term trading in Claimants' account of certificates of deposit, GNMA securities, and various B-share mutual funds, including, but not limited to the following: Merrill Lynch Collateralized Mortgage Trust;

Merrill Lynch Fund for Tomorrow; Merrill Lynch Government Fund; Templeton Growth and Income Fund; Templeton Worldwide Income Fund; Merrill Lynch Basic Value Fund; and Franklin Gold Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested an unspecified amount of compensatory and punitive damages, pre-judgment interest, attorney's fees and arbitration costs.

Respondents requested that the Panel find in its favor on all claims set forth in the Statement of Claim, dismiss the claim in its entirety with prejudice, assess all forum fees and costs against Claimants, and make a specific finding that this action lacked merit, both factually and legally.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent filed a Motion to Stay Arbitration, which asserted, among other things, that the United States District Court for the Southern District of Florida ("District Court") and the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") found that Oscar Freundt-Alberti, Jr. ("OFA") is an indispensable party in this matter, and that pursuant to Rule 10314(d) of the Code, OFA must be joined as a claimant before arbitration may proceed. In their responses, Claimants asserted, among other things, that the Eleventh Circuit did not hold OFA to be an indispensable party, but remanded the issue to the District Court, and the District Court affirmed its decision to "permit the parties to pursue their state claims in arbitration."

In its response to Respondent's Motion to Stay Arbitration, Claimants filed a Motion for Sanctions, which asserted that Respondent's Motion to Stay Arbitration was filed in bad faith and designed only to cause delay and increased expense to Claimants. In its response to Claimants' Motion for Sanctions, Respondent asserted, among other things, that under the Code, sanctions are not available because Respondent did not fail to comply with, or engage in any "willful and intentional material failure to comply" with, any order issued by the Panel.

On or about July 29, 2004, the Panel issued an Order that denied Respondent's Motion to Stay Arbitration and denied, without prejudice, Claimants' Motion for Sanctions.

At the evidentiary hearing, Respondent moved to dismiss the claim, which was denied by the Panel.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable on the claims of breach of fiduciary duty, negligence, breach of contract, breach of NASD rules and churning, and shall pay to Claimants compensatory damages, inclusive of pre-judgment interest, in the amount of \$1,574,967.60.

During the evidentiary hearing, the parties did not raise the issue of Claimants' request for an accounting. Therefore, the Panel did not address this claim.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and Claimants' request for attorney's fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member Surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

Adjournment Fees

No adjournment fees were assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session @ \$1,000.00/session			= \$ 1,000.00
Pre-hearing conference:	October 8, 2003	1 session	
Eleven (11) Hearing sessions @ \$1,000.00/session			= \$11,000.00
Hearing Dates:	August 2, 2004	2 sessions	
	August 3, 2004	2 sessions	
	August 4, 2004	2 sessions	
	August 5, 2004	3 sessions	
	August 6, 2004	2 sessions	
<hr/> Total Forum Fees			= \$12,000.00

The Panel has assessed the total forum fees of \$12,000.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less Payments	= \$ 250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$12,000.00
Total Fees	= \$16,450.00
Less Payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$12,000.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Randy R. Freedman, Esq.	-	Public Arbitrator, Presiding Chairperson
Kalman J. Lester, CLU	-	Public Arbitrator
Joseph R. Klopfer, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

 /s/
Randy R. Freedman, Esq.
Public Arbitrator, Presiding Chairperson

August 12, 2004
Signature Date

 /s/
Kalman J. Lester, CLU
Public Arbitrator

August 12, 2004
Signature Date

 /s/
Joseph R. Klopfer, J.D.
Non-Public Arbitrator

August 12, 2004
Signature Date

August 12, 2004
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Randy R. Freedman, Esq.
Public Arbitrator, Presiding Chairperson

8/12/04
Signature Date

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Public Arbitrator

Signature Date

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